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10/036,107	11/09/2001	Nicholas V. Iuppa	01-592-US	2941

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EXAMINER
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HARRIS, CHANDA L

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 06/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/036,107

Applicant(s)

IUPPA ET AL.

Examiner

Chanda L. Harris

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 40,43-53,56-66,74,83,95,98,100,107,110 and 112 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 40,43-53,56-66,74,83,95,98,100,107,110 and 112 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Status of Claims***

In response to the amendment filed on 6/6/05, Claims 40, 43-53, 56-66, 74, 83, 95, 98, 100, 107, 110, and 112 are pending. Claims 69-73, 77-82, 86-94, 96, 99, 101, 103-106, 108, 111, 113, and 114-118 are cancelled.

### ***Finality of Last Office Action***

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 40, 43-46, 49, 51-53, 56-59, 62, 64- 66, 74, 95, 100, 107, and 112 are rejected under 35 U.S.C. 102(e) as being anticipated by Lotecka (US 6,296,487).**

1. [Claims 40,53,66,74,95,107]: Regarding Claims 40, 53, 66, 74, 95, and 107, Lotecka discloses providing simulation content, wherein providing simulation content

comprises providing dramatic character driven story based simulation content. See Abstract. Lotecka discloses generating a representation of expected responses to the simulation content (i.e., a plurality of sentences the student may select). See Abstract. Lotecka discloses delivering the simulation content to one or more participants via a computer network (i.e., Internet). See Abstract. Lotecka discloses monitoring the one or more participants' responses to the simulation content (i.e., receiving student's selection) and providing feedback (i.e., a response scene) to the one or more participants based upon dramatic goals (i.e., goal) of the simulation. See Abstract. Lotecka discloses comparing the one or more participants' responses with the representation of expected responses to the simulation content and altering the simulation content in response to the one or more participants' responses based upon dramatic goals of the simulation, wherein the dramatic goals are based on dramatic story telling. See Col.5: 12-20. The invention set forth in Lotecka is considered to be a gaming simulation.

Applicants disagree that Lotecka provides dramatic character driven story based simulation content that has dramatic goals that are based on dramatic story telling. However, given its broadest reasonable interpretation, Examiner considers the sequence of responses in a given scene (Col.4: 26-44) to be representative of a story which is defined as an account or recital of an event or a series of events, either true or fictitious. Moreover, Examiner considers the goals in Lotecka to be representative of dramatic goals that are based on dramatic story telling, wherein Applicants have not provided a clear definition of dramatic goals in Applicants' disclosure and/or a definite

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recitation in the claims that would distinguish Applicants' claimed dramatic goals from the goals of Lotecka. Finally, Examiner considers Lotecka to disclose dramatic character based simulation content in that responses are selected based on the identity of the characters in any given scene. See Col.4: 62-34. Therefore, Examiner maintains that Lotecka does provide dramatic character driven story based simulation content that has dramatic goals based on dramatic story telling.

Applicants argue that firearms training, while a task in which military personnel may participate, is not a military scenario in and of itself. However, given its broadest reasonable interpretation, the firearms training disclosed in Lotecka is considered to be a military scenario, wherein Applicant has not provided a clear definition of immersive audio in Applicants' disclosure and/or a definite recitation in the claims that would distinguish Applicants' claimed military scenario from the firearms training of Siddle. Therefore, Examiner maintains the rejection of Claims 50, 63, and 110.

Applicants argue that the invention set forth in Lotecka is a training simulation and not a gaming simulation. However, Applicants have not provided a clear definition of a gaming simulation in Applicants' disclosure and/or a definite recitation in the claims that would distinguish Applicants' claimed gaming simulation from the simulation of Lotecka. Therefore, Examiner maintains that the rejection of the aforementioned limitation is proper.

2. [Claims 43,56]: Regarding Claims 43 and 56, Lotecka discloses wherein the step of delivering the simulation content comprises using multimedia technology (i.e.,

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MACROMEDIA AUTHORWARE) for creating a realistic environment. See Col.3: 27-34.

Applicants argue that Lotecka does not teach creating a realistic environment. However, the claimed limitation, "for creating a realistic environment" is considered to be a statement of intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963). It is Examiner's position that multimedia technology disclosed in Lotecka is capable of creating a realistic environment. Therefore, Examiner maintains the rejection of Claims 43 and 56.

3. [Claims 44,57]: Regarding Claims 44 and 57, Lotecka discloses the step of generating one or more synthetic characters. See Col.4: 54-61.

4. [Claims 45,58]: Regarding Claims 45 and 58, Lotecka discloses wherein the feedback is provided by the one or more synthetic characters. See Col.5: 12-17.

5. [Claims 46,49,59,62]: Regarding Claims 46, 49, 59, and 62, Lotecka discloses wherein the one or more synthetic characters are used to alter the simulation content (e.g., However, if she responded with a "Hi," (40% probability) then the student can click on next-button 9 (FIG.5) and move on to the next prompting scene... ) and altering the

simulation content in response to the one or more participants' responses. See Col.5: 17-20.

Applicants argue that Lotecka does not alter the simulation content at all and for that reason cannot alter the simulation content in response to the one or more participants' responses. However, it is Examiner's position that the enabling of the back-button and the next button in Lotecka (Col.5: 12-20) is an alteration of the simulation content in response to the one or more participants' responses. Therefore, Examiner maintains that Lotecka does alter the simulation content in response to one or more participants' responses.

6. [Claims 51,64]: Regarding Claims 51 and 64, Lotecka discloses the step of delivering immersive audio to the one or more participants. See Col.6: 28-30.

Applicants argue there is no mention of immersive audio in Lotecka. However, given its broadest reasonable interpretation, the audio disclosed in Lotecka is considered to be immersive audio, wherein Applicant has not provided a clear definition of immersive audio in Applicants' disclosure and/or a definite recitation in the claims that would distinguish Applicants' claimed immersive audio from the audio of Lotecka. Therefore, Examiner maintains the rejection of Claims 51 and 64.

7. [Claims 52,65]: Regarding Claims 52 and 65, Lotecka discloses wherein the computer network comprises the Internet. See Abstract.

8. [Claims 100,112]: Regarding Claims 100 and 112, Lotecka discloses wherein said simulation is a training exercise or a gaming exercise. See Abstract. Lotecka discloses wherein the step of delivering the simulation content comprises using

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multimedia technology (i.e., MACROMEDIA AUTHORWARE) for creating a realistic environment. See Col.3: 27-34.

Applicants argue that Lotecka does not teach creating a realistic environment. However, the claimed limitation, "for creating a realistic environment" is considered to be a statement of intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963). It is Examiner's position that multimedia technology disclosed in Lotecka is capable of creating a realistic environment. Therefore, Examiner maintains the rejection of Claims 43 and 56.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 47-48, 60-61, and 83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lotecka in view of Cook (US 5,727,950).**



1. [Claims 47,60]: Regarding Claims 47 and 60, Lotecka does not disclose expressly wherein the feedback is provided by an instructor (i.e. agent). However, Cook teaches such in Col.5: 46-48, Col.5: 64-Col.6: 12, and Col.6: 57-64. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate wherein the feedback is provided by an instructor into the method and system of Lotecka, in light of the teaching of Cook, in order to provide feedback and help on ongoing instruction.

Applicants argues that Cook does not cure the deficiencies of Lotecka. However, Examiner maintains that Cook does cure the deficiencies of Lotecka and is relied upon to teach wherein feedback is provided by an instructor. Therefore, Examiner maintains the rejection of Claims 47 and 60.

2. [Claims 48,61]: Regarding Claims 48 and 61, Lotecka does not disclose expressly alerting an instructor of the one or more participants' responses when the one or more participants' responses deviate from the representation of the expected responses to the simulation content. However, Cook teaches such in Col.13: 46-64 and Col.14: 8-16. A deviation from the representation of the expected responses to the simulation content is considered to be an error. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate the aforementioned limitation into the method and system of Lotecka, in light of the teaching of Cook, in order to track progress.

3. [Claim 83]: Regarding Claim 83, Lotecka does not disclose expressly an instructor interface for displaying information to an instructor, receiving input from the

instructor (i.e. teacher/administrator, agent, instructional designer) and wherein the simulation content is presented by an instructor. However, Cook teaches such in Col.29: 41-Col.30: 1-34. Lotecka does not disclose expressly an artificial intelligence engine (i.e. materials engine) for analyzing input into the one or more participant workstations and presenting the simulation content in response to the input to achieve dramatic goals of the simulation. However, Cook teaches such in Col.38: 59-61-Col.39: 8-12. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate the aforementioned limitations into the method and system of Lotecka, in light of the teaching of Cook in order to allow supervision of the student's use of the system and customizing of materials available to the students. The invention set forth in Lotecka is considered to be a gaming simulation. Lotecka discloses the step of delivering immersive audio to the one or more participants. See Col.6: 28-30.

Applicants argue there is no mention of immersive audio in Lotecka. However, Given its broadest reasonable interpretation, the audio disclosed in Lotecka is considered to be immersive audio, wherein Applicant has not provided a clear definition of immersive audio in Applicants' disclosure and/or a definite recitation in the claims that would distinguish Applicants' claimed immersive audio from the audio of Lotecka.

Applicants argue that the invention set forth in Lotecka is a training simulation and not a gaming simulation. However, Applicants have not provided a clear definition of a gaming simulation in Applicants' disclosure and/or a definite recitation in the claims that would distinguish Applicants' claimed gaming simulation from the simulation of

Lotecka. Therefore, Examiner maintains that the rejection of the aforementioned limitation is proper.

Applicant argues that there is no discussion of digital video in Cook. However, the video disclosed in Cook in Col. 6:13-20, 31-33 would inherently be digital video since the video is being played/presented on a computer which requires digital conversion of video data in order to be able to display video. Therefore, Examiner maintains that the rejection of the above limitation is proper.

Examiner has corrected the citation above per Applicants' argument pertaining to the teaching of an artificial intelligence engine in Lotecka. Examiner maintains that Cook teaches an instructor interface for displaying information to an instructor, receiving input from the instructor (i.e. teacher/administrator, agent, instructional designer) and wherein the simulation content is presented by an instructor. Therefore, the rejection of the aforementioned limitation is proper.

4. [Claim 94]: Regarding Claim 94, Lotecka does not disclose expressly a system activity database for logging information generated in response to the simulation content (i.e. materials specific progress data). However, Cook teaches such in Col.15: 6-8. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate the aforementioned limitation, into the method and system of Lotecka, in light of the teaching of Cook, in order to store materials specific progress data.

5. [Claim 117]: Regarding Claim 117, Lotecka discloses wherein the computer network comprises the Internet. See Abstract.

6. [Claim118]: Regarding Claim 118, Lotecka discloses wherein the step of delivering the simulation content comprises using multimedia technology (i.e., MACROMEDIA AUTHORWARE) for creating a realistic environment. See Col.3: 27-34.

**Claims 50, 63, 98, and 110 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lotecka in view of Siddle.**

[Claims 50, 63, 98, 110]: Regarding Claims 50, 63, 98, and 110, Lotecka does not disclose expressly wherein the simulation content depicts military scenarios. However, Siddle teaches such on p.3, [0021] (i.e. firearms training, mission and/or duty to which a trainee is assigned). Firearms training and depicting a mission and/or duty to which a trainee is assigned is considered to be a military scenario. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate simulation content that depicts military scenarios into the method and system of Lotecka, in light of the teaching of Siddle, in order to train.

Applicants argue that firearms training, while a task in which military personnel may participate, is not a military scenario in and of itself. However, given its broadest reasonable interpretation, the firearms training disclosed in Lotecka is considered to be a military scenario, wherein Applicant has not provided a clear definition of immersive audio in Applicants' disclosure and/or a definite recitation in the claims that would distinguish Applicants' claimed military scenario from the firearms

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training of Siddle. Therefore, Examiner maintains the rejection of Claims 50, 63, and 110.

***Response to Arguments***

This action is made NON-FINAL. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chanda L. Harris whose telephone number is 571-272-4448. The examiner can normally be reached on M-F 6:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jessica Harrison can be reached on 571-272-4449. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Chanda L. Harris*  
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Primary Examiner  
Art Unit 3714